

**Application No. 10/743,982**  
**Reply to Office Action dated February 28, 2006**

**Docket No. 2043.047US3**

**REMARKS**

**I. Summary of the Office Action**

Claims 1-14 are pending in the application; claims 15 and 16 have been withdrawn. The Examiner has rejected claims 1-14 under 35 U.S.C. §102(b), asserting that such claims are anticipated by U.S. Patent No. 5,664,111 to Nahan et al. ("Nahan"). The Examiner has also raised 101 rejections to claims 1-14.

**II. Summary of this Reply**

In this Reply, claims 1 and 3 are amended; claims 17-22 are added. No new matter is added. Support for the added claims can be found, *inter alia*, at page 5, line 13 - page 6, line 2, page 6, line 14 - page 9, line 21, and page 12, line 22 - page 13, line 21. Further, although applicant traverses the 101 rejection, claim 1 is amended herein to obviate the rejection.

**III. Discussion of the Cited Art**

**U.S. Patent No. 5,664,111 to Nahan**

Nahan discloses a system and method of electronically executing transactions with a preprogrammed main computer having data and image storage and retrieval equipment. A plurality of electronic images of works of art which are for sale are created by at least one listing dealer and stored on the storage equipment associated with the main computer. Data is input about each stored image and input data is associated with each corresponding stored image. A plurality of preprogrammed intelligent terminals each having data storage and retrieval equipment, at least one display screen and at least one input device, located at at least one listing dealer location and at at least one buying dealer location

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communicate with the main computer. Search criteria are input through the intelligent terminals for selecting at least one of the stored electronic images for review. Abstract.

#### **IV. Response to 102 Rejections**

A rejection under 35 U.S.C. §102 is proper only if each and every element of the claim is found in a single prior art reference. MPEP § 2131. The Examiner has rejected claims 1-14 under 35 U.S.C. §102(b), asserting that each and every element of these claims are found in Nahan.

##### **Claim 1**

Independent claim 1 is directed to a "computer-implemented method for pricing goods of independent sellers using a marketer controller." The method includes "presenting to the independent seller a menu including a plurality of selectable options, each of the options corresponding to a respective predetermined method for deriving a sale price for the independent seller's good." Accordingly, a seller may select a particular method to be used by the marketer controller/system to determine a sale price for the good that the seller wishes to sell; the seller need not select or specify a particular price/dollar figure for the seller's good.

Further, the method includes "deriving the sale price at which a buyer may purchase the independent seller's good using the predetermined method corresponding to a seller-selected option." This is performed by the computerized marketer controller. Accordingly, the seller of a good selects a particular method for determining a sale price of his good, and a sale price at which the buyer may

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purchase the good is derived by the system according to the seller-selected method.

This is neither taught nor suggested by Nahan.

With respect to price, the system of Nahan allows for display of "a price history of the displayed work. (See FIG. 21). It accomplishes this by accessing information 397, stored on the system in a Price file 399, which delineates the wholesale prices paid for the work. If information about prices paid for the work and/or other works of the same artist is on the system 403, chart of prices paid for a given artist's works, defined by size, medium, and other criteria, is displayed with a cross reference to the dates of sale 403." Nahan, col. 13, lines 3-11. Further, Nahan's system provides that "[c]licking on the Price button shows the suggested retail price" for the work (Nahan, col. 13, lines 13-14) and further allows for production of an art report, which is "a print-out of one or more selected images and any relevant information about the work(s) which is stored on the system", such as "selling prices, data about the work itself such as previous selling price(s), etc." Col. 11, lines 60-66. Accordingly, Nahan discloses certain on-demand retrieval of static, already determined, already fixed, price information. Nahan does not disclose the claimed price determination.

Further, Nahan discloses calculation of a "price difference ratio." As described in Nahan, the "price difference ratio":

is calculated between the "suggested retail" and the "net" or "wholesale" price and a color is then momentarily displayed surrounding the retail price 398-408 (see FIG. 22). The price difference ratio is calculated by taking the retail price paid minus the wholesale price paid divided by the wholesale price divided by wholesale price. This establishes the amount of discount from the suggested retail price. This discount is indicated by the color which may be selected for various discounts, such as red for 20%, blue for 30%, etc. A supplemental numeral is shown elsewhere on the screen which is used for the second discount digit, for example, a 3 added to a blue color would indicate a 33% discount from the retail price. This approach

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assists the dealer in setting a price in a way that prevents a customer from determining the mark up." Col. 13, lines 14-28.

Applicants submit that the price difference ratio description in Nahan appears to be erroneous, and does not involve calculation of an amount of discount from a suggested retail price as asserted therein. In any event, the price difference ratio appears to relate to a completed sale, as it involves calculation of the "retail price paid". Col.13, line 18. Accordingly, the described calculation, and this display of information, is rearward looking in that it relates to price history for completed sales.

They do not relate to determination of a sale price at which a buyer may purchase a good in a subsequent sale transaction. In contrast, the claimed invention relates to determination and display of a price at which a buyer may purchase a good in a sale transaction that has not yet taken place. In other words, the claimed invention relates to pricing a good in furtherance of selling of the good.

To the extent that the retail price and/or price history is displayed via a terminal of Nahan's system, and to the extent that a price difference ratio is calculated, such information is not "displaying the derived sale price to the buyer to present the good for sale at the sale price", as claimed. Instead, only a suggested retail price, past price, and perhaps color coded discount and/or markup information is displayed. This is not display of a sale price at which the buyer can purchase the good.

For at least these reasons, the claimed invention is neither taught nor suggested by Nahan. Reconsideration and withdrawal of the rejection are requested respectfully.

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**Claim 2**

Claim 2 depends from claim 1 and is likewise patentable. Additionally, claim 2 recites "wherein the sale price is determined proximate a time of sale of the good to a buyer." It is emphasized that the claim recites a "computer-implemented method for pricing goods of independent sellers", and that the sale price is a price at which a buyer may purchase the independent seller's good. No such sale price is determined by Nahan's system proximate a time of sale of the good to a buyer, as required by claim 2. As described above, Nahan's system never determines a sale price at which a buyer may purchase a good; instead, Nahan's system merely displays the suggested retail price, actual prices paid in prior sales, coded markup information, etc. The system displays this information to the dealer/salesperson "to assist the dealer in setting a price." Col. 13, lines 26-28.

The claimed invention is neither taught nor suggested by Nahan. Reconsideration and withdrawal of the rejection of claim 2 are requested respectfully.

**Claim 6**

Claim 6 depends from claim 1 and is likewise patentable for the reasons set forth above.

Additionally, claim 6 recites that "the seller agrees, before the sale, to sell the good at a sale price determined by the marketeer proximate a time of sale of the good to the buyer, the sale price being determined in accordance with the predetermined method corresponding to the seller-selected option."

Contrary to the Examiner's assertion, which is a mere restatement of the claim language without any specific reference or citation to Nahan, the claimed

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invention is neither taught nor suggested by Nahan. Nahan is devoid of any disclosure whatsoever relating to a seller's agreement, before the sale, to sell at a price determined by the marketeer according to a predetermined method selected by a seller. In contrast to the claimed invention, Nahan discloses that there is a predetermined suggested retail price, and that a buyer may pay a price different from the retail price. The seller does not in any way specify a method for determining a particular price at which a buyer may purchase the seller's good.

The Examiner is requested respectfully to cite with specificity any portion of Nahan relied upon and believed to provide such disclosure, consistent with 37 CFR §1.104(c)(2).

The claimed invention is neither taught nor suggested by Nahan. Reconsideration and withdrawal of the rejection of claim 6 are requested respectfully.

**Claims 3, 4, 7, 8, 11 and 13**

Dependent claims 3, 4, 7, 8, 11 and 13 are likewise patentable for the reasons set forth above. In addition, claims 3, 7, 11 and 13 include recitations that the predetermined method (which is presented to the independent seller via a menu including a plurality of selectable options, each of the options corresponding to a respective predetermined method for deriving a sale price for the independent seller's good) comprises discounting a manufacturer's suggested retail price. This is neither taught nor suggested by Nahan. In Nahan, an independent seller does not select any pricing method to be used by another to determine a price at which a buyer can purchase the seller's good, and particularly not the recited method.

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The disclosure in Nahan at col. 13, lines 13-28 regarding Fig. 22 appears to be the portion of Nahan relied upon by the Examiner. This disclosure is inconsistent and unclear. As discussed above, it appears to relate to a completed sale transaction. To the extent it might be argued that this disclosure relates to a present or future sale transaction, the undersigned understands this disclosure to relate to display of a suggested retail price for a work, along with a coded indication of how much markup is reflected in the suggested retail price. This follows from the explanation of the price difference ratio calculation, which involves "taking the retail price paid minus the wholesale price paid divided by the wholesale price divided by wholesale price [sic]". Accordingly, for a good having a retail price of \$100 and a wholesale price of \$70, there will be a display of \$100 along with a color/otherwise coded indication that there is a markup of approximately 42% reflected in the \$100 suggested retail price. This is consistent with steps 404-408 of referenced Fig. 22, which states "Find the color which represents the price difference ratio." As stated therein, "this approach assists the dealer in setting a price in a way that prevents a customer from determining the mark up." If the Examiner has an alternative interpretation of this disclosure, the undersigned invites to Examiner to present such alternative interpretation for consideration.

In any event, the cited disclosure of Nahan does not relate to a seller's selection of a predetermined method to be used by another to determine a sale price at which a buyer may purchase the independent seller's good.

Claims 4 and 8 depend from claims 3 and 7 and are likewise patentable for at least similar reasons.

Reconsideration and withdrawal of the rejection of claims 3, 4, 7, 8, 11 and 13 are requested respectfully.

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**Claims 5, 9, 12 and 14**

Dependent claims 5, 9, 12 and 14 are likewise patentable for many of reasons set forth above.

Additionally, claims 5, 9, 12 and 14 include recitations that the predetermined method comprises discounting a price for a certain good in new condition when the independent seller's good is the certain good in used condition. Thus, for example, a used book's price is based upon a discount from the price of the same book in new condition.

Nahan is devoid of any disclosure relating to presenting to the seller a menu including a plurality of selectable options, each of the options corresponding to a respective predetermined method for deriving a sale price for the independent seller's good, in which the predetermined method relates to pricing of a certain good in used condition by discounting a respective price for the good in new condition.

The Examiner is requested respectfully to cite with specificity any portion of Nahan relied upon and believed to provide such disclosure, consistent with 37 CFR §1.104(c)(2).

Reconsideration and withdrawal of the rejection of claims 5, 9, 12 and 14 are requested respectfully.

**Claim 10**

Claim 10 depends from claim 1 and is likewise patentable. Additionally, claim 10 recites that "the sale price is determined proximate to a time the buyer wishes to buy the good." Further, claim 10 involves "deriving the sale price at which a buyer may purchase the independent seller's good using the predetermined method corresponding to a seller-selected option", and the option is selected by the seller



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from a menu of options, each corresponding to a respective predetermined method for deriving a sale price. This is neither taught nor suggested by Nahan.

Reconsideration and withdrawal of the rejection of claim 10 are requested respectfully.

**New claims 17-22**

New claims 17-19 relate to display of the sale price via a website, and depend from claim 1 and are likewise patentable.

New independent claim 20 recites "setting a sale price at which a buyer may purchase the independent seller's good, the sale price being set using the respective predetermined method corresponding to a certain one of said plurality of selectable options selected by said seller; and displaying the sale price to the buyer, the good being available for purchase by the buyer at the sale price." Claim 21 depends from claim 1 and recites "the predetermined method provides for setting of the sale price as a function of another price."

New independent claim 22 recites " proximate to a time of sale to a buyer, calculating the sale price at which a buyer may purchase the independent seller's good, the sale price being calculated using the predetermined method corresponding to a certain one of said plurality of selectable options previously selected by said seller, the predetermined method comprising a mathematical function; and displaying the calculated sale price to the buyer to present the good for sale to the buyer."

New claims 20-22 are thus patentable for reasons similar to those set forth above, particularly with respect to claims 1, 2 and 6.

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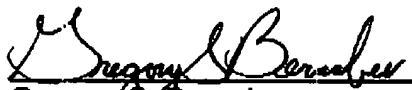
**CONCLUSION**

In view of the foregoing amendments and remarks, Applicants believe claims 1-14 and 17-22 to be patentable and the application in condition for allowance, and request respectfully issuance of a Notice of Allowance.

If any issues remain, the undersigned requests a telephone interview prior to the issuance of an action.

Respectfully submitted,

Date: May 30, 2006

  
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